HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 5425 of 2001 (SS)

(Old No. 11949 of 1993)

Pyar Singh Kemwal s/o Sri Indra Singh
Village Lengarath, P.O. Kamad
District Tehri Garhwal ..... Petitioner

Versus

1. The Additional Director, Animal Husbandry, Gopeshwar Chamoli
2. The Deputy Director Animal Husbandry Department, Garhwal Mandal, Pauri
3. The Chief Veterinary Officer, Tehri Garhwal ..... Respondents

Dated: 1.3.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Rajendra Dobhal counsel for the petitioner and Standing Counsel, counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 3.4.1993 passed by the respondent no. 3.

Briefly stated the petitioner was appointed on daily wages as class IV employee on 17.2.1992 in Natural Insemination Centre, Animal Husbandry Department in Kainchu, Kamad, District Tehri Garhwal. Thereafter petitioner was appointed against the substantive post of Class IV on regular basis vide order dated 23.3.1993 and he was posted as Bull Attendant in Natural Insemination Centre, Kamand. He joined his duty on that post on 31.3.1993. On 3.4.1993 the Chief Veterinary Officer, Tehri Garhwal passed order and cancelled the petitioner's

appointment as class IV employee and asked him to work on daily wages.

On account of cancellation of regularisation, the petitioners have suffered civil consequences, as held by the Apex Court in the case of State of Orissa vs. Dr. Binapani Dei and others AIR 1967 SC 1269. The Apex Court has observed that the administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice. The observations of the Apex Court are quote below:

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be

performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

The cancellation orders could not have been passed without affording opportunity of hearing to the petitioners as held by this Court in Writ petition No. 236 (SS) of 2000, Pooran Singh vs. State of Uttaranchal and others, relying upon the the Apex Court in Basudeo Tewari vs. Sido Kanhu University and others (1998) 8 S.C.C. 194 and Gajanan L. Parnekar vs. State of Goa and another (1998) 8 S.C.C. Hon'ble Mr. Justice P.C. Verma has held as under:

"It is not disputed that the cancellation orders has been passed without any notice or pay in lieu of notice as required in condition No.2 of the regularisation orders contained in annexure No.1, therefore, cancellation orders have been passed without affording any opportunity of hearing to the petitioners. As the regularisation order were passed in implementation of the Scheme contained in Govt. Order dated 15.10.1997 after due selection and the petitioners were regularised against the then existing posts, as such, the reason assigned for cancellation that posts have been reallocated by the Chief Engineer vide order dated 10.04.2000 is not acceptable.

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On account of cancellation of regularisation, the petitioners have suffered civil consequences, therefore, the cancellation orders could not have been passed without affording opportunity of hearing to the petitioners as held by the Apex Court in Basudeo Tewary vs. Sido Kanhu University and others (1998) 8 S.C.C. 194. In Gajanan L. Parnekar vs. State of Goa and another (1998) 8 S.C.C. the Apex ourt held that recall of order of absorption without giving notice or opportunity of hearing is violative of principles of natural justice.

In the case Smt. Maneka Gandhi vs. Union of India and another, AIR 1978 SC 597, the Apex Court has observed as under:

"It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty go give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action.

"In England, the rule was thus expressed by Byles J. in Cooper vs. wandsworth Board of Works: (1863)14 CB (NS) 180:

"The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence. upon Adam before he was called upon to make his defence. Adam (says God), "where art thou? Hast thou not eaten of the tree

whereof I commanded the that thou shouldest not eat." And the same question was put to Eve also."

The judgment in the case of Meneka Gandhi (supra) has been followed in the case of West Bengal Electricity Regulatory Commission vs. C.E.S.C. Ltd. JT 2002 (7) SC 578, relying upon the case of Mrs. Maneka Gandhi vs. Union of India & Another, 1978 (1) SCC 248 as under:

"The right of audi alteram partem is a valuable right recognised even under the India Constitution. See Mrs. Menaka Gandhi vs. Union of India and another, 1978 (1) SCC 248 wherein it is held, the principle of the maxim which mandates that no one should be condemned unheard; is a part of rule of natural justice. We have already held that such right of hearing conferred by a statute cannot be taken away even by courts."

The Apex Court in the case D. K. Yadav vs J.M.A. Industries Ltd; (1993) 3 SCC 259 has further held as under:

"It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the Constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehension connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edn. Page 1487 defined civil rights are such as

belong to every citizen of the state of country..... they include.... rights capable of being enforced or redressed in a civil action..... In State of Orissa vs. (Miss) Binapani Dei(1967) 2 SCR 625 this Court held tht even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuaton was in violation of principle of natural justice.

In State of W.B. Vs. Anwar Ali Sarkar 1952 SCR 284 AIR 1952 SC 75 per majority, a seven Judge Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 of the Constitution as any rule of substantive law. In Maneka Gandhi vs. Union of India (1978) 1 SCC 248 another Bench of seven judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. Even executive authorities which take administrative

action involving any deprivation of or restriction on inherent fundamental rights of citizen, must taken care to seen that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way, which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."

Admittedly the order of cancellation of the appointment on class IV post has been passed without affording any opportunity of hearing to the petitioners.

The operation of the order dated 3.4.1993 has been stayed at the time of filing of the writ petition and the petitioner is still working as Bull Attendant.

In view of above, a writ of certiorari is issued quashing the order dated 3.4.1993 passed by the respondent No.3 and the petitioner is reinstated with consequential service benefits.

Accordingly, the writ petition is allowed. No order as to costs.

Dated: 1.3.2006 **Rajesh Tandon, J.**

*Dhyani